

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

1. W. A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL OF )  
THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT, C. MILES TOLBERT, )  
in his capacity as the TRUSTEE FOR )  
NATURAL RESOURCES FOR THE )  
STATE OF OKLAHOMA )  
PLAINTIFF )

vs. )

) 05-CV-0329-TCK-SAJ

1. TYSON FOOD, INC., )  
2. TYSON POULTRY, INC., )  
3. TYSON CHICKEN, INC., )  
4. COBB-VANTRESS, INC., )  
5. AVIAGEN, INC., )  
6. CAL-MAINE FOODS, INC., )  
7. CAL-MAINE FARMS, INC., )  
8. CARGILL, INC., )  
9. CARGILL TURKEY PRODUCTION )  
LLC, )  
10. GEORGE'S, INC. )  
11. GEORGE'S FARMS, INC. )  
12. PETERSON FARMS, INC.. )  
13. SIMMONS FOODS, INC., and )  
14. WILLOW BROOK FOODS, INC. )  
DEFENDANTS )

TYSON FOODS, INC., TYSON )  
POULTRY, INC., TYSON CHICKEN, )  
GEORGE'S, INC., GEORGE'S FARMS, )  
INC., PETERSON FARMS, INC., )  
SIMMONS FOODS, INC., AND )  
WILLOW BROOK FOODS, INC. )

THIRD PARTY PLAINTIFFS, )

vs. )

CITY OF TAHLEQUAH, et.al. )

Third Party Defendants )

and

CARGILL TURKEY PRODUCTION, LLC.)  
Defendant/Third Party Plaintiff )  
v. )  
CITY OF TAHLEQUAH, et al )  
Third Party Defendants )

Answer to Cross Claim of Cargill Turkey Production, LLC  
Against City of Watts

COMES NOW, Jo Nan Allen, attorney for Third Party Defendant, the City of Watts and answers the Cross Claim of Cargill Turkey Production, LLC as follows:

Regarding, I. BACKGROUND, Third Party Defendant, City of Watts (hereinafter "Watts") is without sufficient knowledge of the background and the same are denied.

1. Watts is without sufficient knowledge of the allegations in Paragraph 1 and the same is denied.

2. Watts is without sufficient knowledge of the allegation in the first sentence of Paragraph 2, and the same is denied. Watts denies that the second sentence, third sentence, and the fourth sentence. Watts also denies the fifth sentence which is the accordingly sentence.

3. Watts denies Paragraph 3 and states firmly that there has been no release of phosphorus, nitrogen or any other harmful constituent by Watts.

4. Watts denies the first sentence of Paragraph 4 applies to Watts and questions the numerous allegation in the rural northeast of Oklahoma. Watts is without sufficient knowledge of the second sentence of Paragraph 4 and the same is denied. Watts admits the third sentence of Paragraph 4.

5. Watts is without sufficient information of paragraph 5 of the first and second sentence and the same is denied. Watts admits the third sentence of Paragraph 5.

6. Watts is without sufficient information of the first sentence, second sentence and third sentence of paragraph 6 and the same is denied.

7. Watts is without sufficient information of the first sentence, second sentence and third sentence of Paragraph 7 and the same is denied.

8. Watts is without sufficient information of the first sentence in Paragraph 8 and the same is denied. Watts admits the second sentence of Paragraph 8.

9. Watts is without sufficient information of the first, second, third or fourth sentences in Paragraph 9 and the same is denied.

## II. Parties

### A. Cross-Claim Plaintiff, Cargill Turkey Production, LLC

10. Watts is without sufficient information of Paragraph 10 and neither admits or denies Paragraph 10.

### B. Cross-Claim Defendant, City of Watts

11. Watts admits that it is a municipal corporation but denies discharging sewage or wastewater or sewage sludge from its treatment plants into the IRW in the first sentence of Paragraph 11. . Watts denies the second statement and avers that it does not engage in the practice of applying fertilizers and pesticides to properties. Watts denies the third statement. Watts emphatically denies Paragraph 3 as the Oklahoma Department of Environmental Quality does not allow the spread of any fertilizer upon Watt's property except Ammonia Nitrate, which does not release phosphorus, phosphates or pot ash into the IRW. Watts denies liability as it does not release the offensive constituents into the IRW and further requests the court to dismiss this cross claim as frivolous and a nuisance.

## IV. Jurisdiction and Venue

12. Watts is without sufficient information of Paragraph 12 and neither admits or denies Paragraph 12.

13. Watts denies engaging in activities that would harm property located in the state of Oklahoma and therefore denies Paragraph 13.

## V. Statements of Fact

14. Watts is without sufficient information of Paragraph 14 and neither admits or denies Paragraph 14.

15. Watts is without sufficient information of Paragraph 15 and neither admits or denies Paragraph 15.

16. Watts is without sufficient information of Paragraph 16 and neither admits or denies Paragraph 16.



17. Watts is without sufficient information of Paragraph 17 and neither admits or denies Paragraph 17.

18. Watts is without sufficient information of Paragraph 18 and neither admits or denies Paragraph 18.

19. Watts is without sufficient information of Paragraph 19 and neither admits or denies Paragraph 19.

20. Watts is without sufficient information of Paragraph 20 and neither admits or denies Paragraph 20.

21. Watts is without sufficient information of Paragraph 21 and neither admits or denies Paragraph 21.

22. Watts is without sufficient information of Paragraph 22 and neither admits or denies Paragraph 22 .

23. Watts is without sufficient information of Paragraph 23 and neither admits or denies Paragraph 23.

24. Watts is without sufficient information of Paragraph 24 and neither admits or denies Paragraph 24.

25. Watts is without sufficient information of Paragraph 25 and neither admits or denies Paragraph 25.

26. Watts is without sufficient information of Paragraph 26 and neither admits or denies Paragraph 26.

27. Watts is without sufficient information of Paragraph 27 and neither admits or denies Paragraph 27.

28. Watts is without sufficient information of Paragraph 28 and neither admits or denies Paragraph 28.

29. Watts is without sufficient information of Paragraph 29 and neither admits or denies Paragraph 29.

30. Watts is without sufficient information of Paragraph 30 and neither admits or denies Paragraph 30.

31. Watts is without sufficient information of Paragraph 31 and neither admits or denies Paragraph 31.

32. Watts is without sufficient information of Paragraph 32 and neither admits or denies Paragraph 32.

33. Watts is without sufficient information of Paragraph 33 and neither admits or denies Paragraph 33.

34. Watts is without sufficient information of Paragraph 34 and neither admits or denies Paragraph 34.

35. Watts is without sufficient information of Paragraph 35 and neither admits or denies Paragraph 35.

B. General allegations Regarding Cross Claim Defendant

36. Watts neither admits or denies incorporation Paragraph 36.

37. Watts is without sufficient information of Paragraph 37 and neither admits or denies Paragraph 37.

38. Watts admits Paragraph 38.

39. Watts admits Paragraph 39.

40. Watts denies Paragraph 40 and denies discharging scwage, wastewater, applying organic and commercial fertilizer and chemicals, and engaging in other activities which result in the release of some or all of the above.

41. Watts denies Paragraph 41 and avers that only ammonia nitrate has been spread as the Oklahoma Department of Environmental Quality supervises and dictates that no fertilizer or chemical will be spread on Watts property.

42. Watts is without sufficient information of Paragraph 42 and neither admits or denies Paragraph 42

43. Watts denies Paragraph 43 and further denies any responsibility for contribution to the Cross Claim Plaintiff.

44. Watts is without sufficient information of Paragraph 44 and neither admits or denies Paragraph 44.

45. Watts is without sufficient information of Paragraph 45 and neither admits or denies Paragraph 45

46. Watts is without sufficient information of Paragraph 46 and neither admits or denies Paragraph 46.

47. Watts denies Paragraph 47 and further states that Watts does not engage in operations that have and continue to result in the release of Phosphorous and some or all of the constituents alleged in the original amended complaint and further states that Watts is not a potentially responsible party.

48. Watts is without sufficient information of the first sentence in paragraph 48 and neither admits or denies the first sentence. Watts denies the second sentence and further states that in its activities and operations nothing is released or threatened with release that would be considered a hazardous substance.

49. Watts denies Paragraph 49 and denies any liability in the release of hazardous substances as the cross claim Plaintiff claims.

50. Watts denies Paragraph 50, denies release of any hazardous substances and denies any liability for any costs adjudged against the Cross Claim Plaintiff.

51. Watts denies Paragraph 51, and states that Cross Claim Plaintiff is not entitled to a declaratory judgment as they can not prove that any hazardous substances were released as the Oklahoma Department of Environmental Quality closely monitors the municipality. Further Watts would not be responsible for any future costs regarding necessary responses regarding a declaratory judgment entered by the court just because the Cross Claim Plaintiff may be responsible for costs.

52. Watts is without sufficient information of Paragraph 52 and neither admits or denies Paragraph 52.

53. Watts is without sufficient information of Paragraph 53 and neither admits or denies Paragraph 53.

54. Watts is without sufficient information of Paragraph 54 and neither admits or denies Paragraph 54.

55. Watts denies Paragraph 55 and further denies any liability for its activities or operations as Watts does not release hazardous substances.

56. Watts denies Paragraph 56 and denies any responsibility of contribution for damages as Watts has not released some or all of the hazardous substances.

57. Watts is without sufficient information of Paragraph 57 and neither admits or denies Paragraph 57.

58. Watts denies the first and second sentence of Paragraph 58.

59. Watts denies Paragraph 59.



60. Watts denies the first and second sentences of Paragraph 60. Watts denies any liability.

61. Watts asks the court to deny Cargill Turkey Production, LLC's prayer for relief and to rule that Watts has no liability in this lawsuit.

#### AFFIRMATIVE DEFENSES TO CROSS CLAIM

62. Watts, Cross Claim Defendant further asserts that Watts is entitled to the defenses of estoppel, laches, failure to timely file, contributory negligence, assumption of risk and that Third Party Plaintiff has failed to state a claim upon which relief can be granted and further asserts any other affirmative defenses available from facts developed during discovery.

63. Cross Claim Defendant, the City of Watts for the Counter Claim, further offers the defenses of the cross claim created a nuisance and Cross claim Defendants have filed a frivolous cross claim the City of Watts.

64. Cross Claim Plaintiff's have created a nuisance by filing this cross claim against the small community of Watts and can not prove that Watts released any hazardous substances into the Illinois River in the Watts area.

65. Exhibit A of Watts answer to the Third Party Plaintiff's lawsuit demonstrates that Watts since before January of 1998 have had cleaner waste water than the water in the Illinois River.

66. Upon request, the City Clerk of Watts has forwarded all information requested by the Cross Claim Plaintiff, and they have filed this frivolous cross claim that with the information and knowledge that the City of Watts is not contributing to the degrading of the Illinois River or its watershed.

Therefore the City of Watts requests damages for nuisance and filing a frivolous cross claim and all attorney fees and costs of defending this lawsuit and all other and further relief as it is just and appropriate.

City of Watts, Cross Claim Defendant

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Dated: March 21, 2006.

### CERTIFICATE OF SERVICE

I certify that on the 21st day of March, 2006, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants.

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